Supreme Court, U. S.
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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

## No. 77-1199

TIMES-PICAYUNE PUBLISHING COMPANY,
Petitioner,

*versus*

JOEL I. FORREST,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

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IN THE

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OCTOBER TERM, 1977

No.

**TIMES-PICAYUNE PUBLISHING COMPANY,**
**Petitioner,**

***versus***

**JOEL I. FORREST,**
**Respondent.**

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

Petitioner, Times-Picayune Publishing Company, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal, First Circuit, State of Louisiana, entered in this proceeding on June 13, 1977.

## OPINIONS BELOW

The opinion of the Court of Appeal, First Circuit, State of Louisiana, dated June 13, 1977, is reported at 347 So.2d 1255 and appears in Appendix A hereto, *infra* p. 13.

The oral reasons for judgment given by the Trial Court (Nineteenth Judicial District Court of the State of Louisiana) on November 15, 1976, are unreported but printed as Appendix B hereto, *infra*, p. 20.

## JURISDICTION

The judgment of the Court of Appeal, First Circuit, State of Louisiana was entered on June 13, 1977. On July 11, 1977, the Court of Appeal denied rehearing. A timely application for a writ of certiorari or review was filed with the Supreme Court of Louisiana and denied on October 28, 1977, Appendix C, *infra*, p. 22.

On January 17, 1978, Mr. Justice Powell entered an order extending for 30 days or through February 27, 1978, the time for filing this petition for certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

## QUESTIONS PRESENTED

1. Is an engineer who prepares specifications for a multi-million dollar state building a "public figure" or a "public official" for purposes of a newspaper article reporting a state authority's preliminary determination that the engineer has drawn proprietary specifications that are potentially unlawful.

2. Absent any showing of actual malice, may a newspaper that reports a state authority's preliminary determination that specifications for a state building are proprietary and potentially unlawful be required to respond in damages for libelling the engineer who prepared the specifications?



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides, in pertinent part:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press;"

Section One of the Fourteenth Amendment to the Constitution of the United States, provides, in pertinent part:

> "No State shall make or enforce any law which abridges the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law."

La. R.S. 38: 2290-96 provides, in pertinent part:

"REGULATIONS OF CLOSED SPECIFICATIONS AND EXCLUSIVE DISTRIBUTION OF MATERIALS

§2290. **Closed specification prohibited; exception**

A. No architect or engineer, either directly or indirectly, shall submit a closed specification of a product to be used in the construction of a public building or project, unless all other products, other than the one specified, would detract from either the utility or appearance of the building or the uniform appearance of other public buildings in the immediate vicinity.

B. Under no circumstances shall a closed specification be submitted, or authorized, where any person or group of persons possess the right to exclusive distribution of the specified product.

• • •

§2293. **Proceedings to annul contracts violating provisions of this Part**

Any contract entered into in violation of the provisions of this Part shall be considered null and void and the attorney general is directed to institute legal proceedings to have the contract judicially declared null and void; all costs of the proceedings to be borne by the defendant, or defendants.

• • •

§2296. **Penalty.**

Any person, firm, corporation, partnership or organization who violated any provisions of this Part shall be guilty of a misdemeanor and shall be punishable by a fine of not more than $1,000.00 or imprisonment for not more than six months, or both."

## STATEMENT OF THE CASE

This case centers around a single newspaper article — in fact, a single headline — published in the New Orleans *States-Item* on January 26, 1973.

The article in question was based upon and quoted extensively from a letter written to a State budgetary official by the Louisiana Educational Television Authority ("LETA"), charged by law with review of all state plans for communications equipment. LETA's letter related its evaluation of specifications for communication equipment at the new Louisiana State School For The Deaf in Baton Rouge. The specifications were to be bid competitively by prospective contractors. LETA's letter of evaluation included the following statement:



> "The nature of these specifications seem [sic] somewhat proprietory [sic] to certain manufacturers. Nonetheless, it is our desire to have specifications that all responsible bidders can bid with impunity."

Closed specifications in public bidding are unlawful in Louisiana.[1]

The day after the LETA letter was written, the *States-Item* published a page one story, by its regular capital correspondent, reporting on the LETA letter.[2] The story carried a Baton Rouge dateline and began:

> "Specifications for an expensive television-sound system for the new school for the deaf scheduled for bidding Monday appear to be proprietary, officials of the Louisiana Educational Television Authority today advised the State Bond Commission . . ."

The headline of the article read "BID SPECS REPORTED 'RIGGED' ". The article identified respondent by name as the electrical engineer responsible for preparation of the specifications.

On February 9, 1973, respondent brought this state court libel action against petitioner, as publisher of the *States-Item*, and also against the *States-Item* reporter who wrote the January 26 story. The complaint alleged that the article "contained statements, references and innuendos reflecting upon [respondent], both personally and professionally, and clearly indicated to all concerned that [respondent] is a dishonest man, a person who disregards the law and an offender of the law." Respondent sought damages of $2,750,000.

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[1] La. R.S. 38:2290-96, *supra*.
[2] The article is reproduced in full in Appendix D, p. 23, *infra*.

After discovery, petitioner moved for summary judgment on the ground that respondent was a "public official" or "public figure" as to whom petitioner's publication was privileged in the absence of "actual malice," as defined in *New York Times v. Sullivan*. Petitioner also urged that the article was true or substantially true and in any event not indicative of the "fault" required by *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). The court denied petitioner's motion for summary judgment and, after a trial before the Judge without jury, awarded respondent damages of $10,000.00

In its oral reasons for judgment, the court concluded that respondent was neither a public figure nor a public official and accordingly refused to apply the New York Times standard of actual malice. (App. B, p. 20, *infra.*) The trial court also found that the body of the January 26 article "was merely an explanation and quotation from a letter" and therefore not libelous but that "the word [rigged] used in the headline here did not appropriately fit the story . . . and as such it was defamatory and . . . there was fault as envisioned by the [Louisiana] Civil Code." (*Id.*)[3]

The Louisiana Court of Appeal, First Circuit, affirmed the judgment of the trial court. Respondent was not a public official, the court said, because that designation "applies, at a minimum, to those persons employed by a public governmental body who have, or appear to have, substantial responsiblity for or control over the conduct of governmental affairs." (App. A, p. 13, *infra.*) Respondent was only

> ". . . a private consulting engineer who was hired by the architect. While he was responsible for the plans and specifications of the subject communications system, he was nonetheless totally accountable only to the architect. The eventual expenditure of public funds on the proposed building does not in itself make [respondent] a public official . . ."

[3] The court dismissed respondent's claim as to the *States-Item* reporter since the court found he played no role in preparation of the headline. The reporter is not before this Court.



The Court of Appeal also concluded, without explanation, that respondent was not a public figure. (App. A, p. 13, *infra*). Finally the court agreed with the trial court that the use of the single word "rigged" in the headline constituted actionable fault, reasoning that respondent was guilty of "a poor and erroneous choice of words." (App. A, p. 13, *infra.*).

The Supreme Court of Louisiana denied review.

## REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW RAISES RECURRING AND IMPORTANT PROBLEMS CONCERNING THE CONSTITUTIONAL PRIVILEGE OF THE PRESS TO REPORT ON THE EXPENDITURE OF PUBLIC FUNDS.

Under *New York Times v. Sullivan* and subsequent defamation cases decided by this Court, a defamation plaintiff may be classified for constitutional purposes either as a private individual, a "public official," or a "public figure." In *Gertz v. Robert Welch, Inc., supra*, the Court discussed two alternative bases for finding that a plantiff is a public figure. Either he may "achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts," or "more commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." 418 U. S. at 351-352.

In this case, respondent voluntarily contracted to supervise the expenditure of more than a million dollars of public money on a state building. Although there is precedent for treating respondent as a public official,[4] the cutting edge of the judgment below is its unelaborated refusal to accord public figure status to respondent even for "the limited range of issues" reported in a news story that touched respondent only in connection with his performance of the public's work. Taken together with the extraordinary severe standard of fault imposed by the Louisiana courts in this case, the decision below handcuffs public contract reporting in a radical and mischievous way.

It is not only the vigor of reporting on public construction contracts that will be undercut by the decision of the Louisiana courts, but coverage of the entire range of contractual relationships by which modern government gets its work done. Consulting contracts; public relations contracts; waste disposal contracts; data processing contracts; research contracts; procurement contracts and many others are commonplace subjects of the media's attention. The Court of Appeal reasoned that a major supervisor of public contract work remains a private individual as long as he avoids privity of contract with the State. This formalistic standard is wholly at odds with *Gertz's* practical balancing of private reputation and freedom of the press. If permitted to stand, the decision below will seriously chill reporting that relates to high-echelon subcontractors like respondent and, more generally, to employees of government contractors when those employees do

[4] *See, e.g., Rosenblatt v. Baer*, 383 U.S. 75 (1966). In *Rosenblatt*, this Court held a former superintendent of a county recreational area to be a public official, noting that "the 'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." 383 U.S. at 85.



not themselves have a direct contractual relationship with government.

This case bears no resemblance to *Time, Inc. v. Firestone*, 424 U. S. 448 (1976). There, Mrs. Firestone's highly personal marital difficulties were the subject of media interest and she "did not assume any role of especial prominence in the affairs of society, other than perhaps Palm Beach society . . ." 424 U.S. at 453. Additionally, the court emphasized that whatever prominence was bestowed on Mrs. Firestone through judicial dissolution of her marriage was by no means "voluntary". *Id.*, at 454.

In contrast, respondent Forrest made a free economic choice to take on a major role in supervising an important state public works project. The news story concerning him was not an exposé of his personal or family life, but instead reported a possible violation of Louisiana law. *Firestone* does not control here, since this case involves the basic operations of government and the central First Amendment privilege of reporting criticism of those operations.

2. THE DECISION OF THE COURT OF APPEAL IS UNEXPLAINED AND CONTRARY TO ALL RELEVANT AUTHORITY.

Apart from this Court's decisions in *New York Times v. Sullivan* and *Gertz*, which it mentioned but did not discuss, the Louisiana Court of Appeal cited no authority for its conclusion that respondent was not a public figure for purposes of this case. The decision below is, in fact, contrary to several fully considered District Court decisions. In *Hutchinson v. Proxmire*, 431 F. Supp. 1311 (W.D. Wisc. 1977), the District Court held that a research scientist who received Senator

Proxmire's "Golden Fleece of the Month Award" was a public figure, at least as to allegedly defamatory comments relating to his publicly-funded research activities:

> Given Dr. Hutchinson's long involvement with publicly-funded research, his active solicitation of federal and state grants, the local press coverage of his research, and the public interest in the expenditure of public funds on the precise activities in which he voluntarily participated, the court concludes that he is a public figure for the purpose of this suit. As he acknowledged in his deposition, "Certainly, any expenditure of public funds is a matter of public interest."

431 F. Supp. at 347. Similarly, *Adey v. United Action for Animals*, 361 F. Supp. 457 (S.D.N.Y. 1973), *aff'd*, 493 F 2d 1397 (2d Cir.), *cert. denied*, 419 U.S. 842 (1974), held that a research scientist employed by NASA and involved in planning a space flight for a monkey was both a public figure and a public official with respect to allegedly defamatory remarks about his treatment of experimental animals. And in *Martin Marietta Corp. v. Evening Star Newspaper*, 417 F. Supp. 947 (D.D.C. 1976), the court held that Martin Marietta was a public figure for purposes of a lawsuit alleging that Martin Marietta had been libelled by a newspaper article recounting the corporation's entertainment of Pentagon officials. There the District Court said:

> The issues raised by the October 31 article are undoubtedly of legitimate public interest. Both as taxpayers and as citizens in a democracy the public has an interest in the manner by which defense contracts are awarded. In addition, the prospect that the activities described in the article constituted violations of an Executive Order and Defense Department regulations creates a legitimate public controversy. Unlike *Firestone*, the instant case



> does not involve deeply personal events in the life of the plaintiff.

417 F Supp. at 957. As in *Martin Marietta* the public interest in government contracts, together with possible violations of law, and the absence of any truly personal disclosure go to the heart of petitioner's claim of constitutional privilege.

Indeed, the decision of the Louisiana Court of Appeal is contrary to this Court's own decision in *Greenbelt Coop. Assn. v. Bresler*, 398 U.S. 6 (1970). There a private real estate developer sued the local newspaper for reporting allegedly untrue statements made about the developer at city council meetings. In finding that the developer "clearly fell within even the most restrictive definition of a 'public figure'," 398 U.S. at 8-9, the Court emphasized the economic nexus between the developer and the public fisc:

> Bresler was deeply involved in the future development of the City of Greenbelt. He had entered into agreements with the City for zoning variances in the past, and was again seeking such favors to permit the construction of housing units of a type not contemplated in the original city plan. At the same time the City was trying to obtain a tract of land owned by Bresler for the purpose of building a school. Negotiations of significant public concern were in progress, both with school officials and the City Council.

*Id.* Although the Court noted that Bresler was well-known in the community, *Bresler's* central and commonsense thrust is that a private businessman who deals with governmental authorities is a public figure, at least with respect to news stories relating to those public dealings.

Finally, the Louisiana courts made no effort to base the

libel judgment at issue on petitioner's actual knowledge or reckless disregard of the asserted falsity of the disputed headline. The Court of Appeal rejected petitioner's argument that, since closed specifications in public bidding are unlawful in Louisiana, the headline word "rigged" accurately tracked official criticism of respondent's specifications as "proprietary" or "closed." Instead, the court chose to extend the concept of fault to the "poor and erroneous choice" of the word "rigged" by petitioner's unidentified copy editor. Respondent made no effort to prove either actual knowledge or reckless disregard, and the record is barren of evidence to support such a finding.

## CONCLUSION

For the reasons stated, a writ of certiorari should issue to review the judgment and opinion of the Louisiana Court of Appeal.

Respectfully submitted,

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February —, 1978.



## APPENDIX A

**JOEL I. FORREST**

**Plaintiff-Appellee**

*versus*

**BILL LYNCH AND TIMES-PICAYUNE PUBLISHING COMPANY**

**Defendant-Appellant**

**Court of Appeal, First Circuit, State of Louisiana**
**Number 11,361**

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF EAST BATON ROUGE, HONORABLE DANIEL W. LEBLANC, JUDGE, PRESIDING

BEFORE: SARTAIN, COVINGTON AND LOTTINGER, JJ.

SARTAIN, J.

June 13, 1977

This is a defamation suit arising out of an article that appeared on January 26, 1973 in the States Item, a newspaper of general circulation in the New Orleans area.

Plaintiff, Joel I. Forrest (appellee) is a consulting electrical engineer. He was engaged by the architect to prepare plans and specifications, including bid specifications, for the television-sound system for the Louisiana State School for the Deaf, Baton Rouge, Louisiana.

The article itself was written by Bill Lynch. The headline attending the article was prepared by an unidentified staff member of the owner-publisher, Times Picayune Publishing Company (appellant).

Appellee named as defendants the author, Lynch, and the appellant publisher. The trial judge rendered judgment in favor of appellee and against the publisher only, absolving the author of any liability. We affirm.

The facts are not in dispute. The taking of bids and related matters are under the supervision of the State Bond and Building Commission, Bob Baskin, Director. However, the law requires the prior approval of the Louisiana Educational Television Authority (LETA) on that portion of the project relating to the communication system. Robert D. Blazier and Max Fetty are the Educational Television Engineer and Executive Director, respectively, of LETA.

On the Tuesday preceding the Monday on which the bids were to be taken, the plans and specifications pertaining to the communication system were submitted to Blazier and Fetty. On the intervening Thursday, January 25, 1973, Blazier and Fetty addressed a letter to Baskin, which in pertinent part stated:

"After reviewing the specifications for the communication system for the Louisiana State School for the Deaf in Baton Rouge, I must commend the writer for the use of very innovative television technology. The functions described in these specifications require sophisticated interconnection and planning.

"In order to properly evaluate the true quality of these specifications, it will be necessary that one-line functional drawings be provided. It is incumbent upon us to determine that the system as specified will function in accordance with the desires of the School for the Deaf. **The nature of these specifications seem somewhat proprietory (sic) to certain manufacturers.** Nonetheless, it is our desire to have specifications that all responsible bidders can bid with impunity. In evaluating these specifications, it would assist us greatly to have manufacturers specifications sheets for each of the major electronic devices. * * *" (Emphasis ours)



Bill Lynch, capital correspondent for appellant, was given a copy of the letter. The subject article was then written and transmitted to appellant for publication. It appeared in appellant's paper on the following day, Friday, January 26, 1973.

The lead paragraph set the general tenor of the article:

> "BATON ROUGE—Specifications for an expensive television-sound system for the new school for the deaf scheduled for bidding Monday appear to be proprietary, officials of the Louisiana Educational Television Authority today advised the State Bond Commission. * * *"

The above portions of the letter of January 26, 1973, are also quoted in their entirety. With respect to appellee the article stated:

> "* * * The school is being designed by the architectural firm of August Perez and Associates of New Orleans and the electrical engineering is by Joel Forrest of Baton Rouge. * * *"

However, the headline of the article stated:

"BID SPECS REPORTED 'RIGGED' "

The article was placed on page one of the paper and was continued to page six. The headline for the continued portion of the article read:

"Bid Specs Questioned"

The record reflects that on the evening of January 25, 1975, Forrest met with Blazier and it was determined that the bid specifications were in order and were therefore approved by LETA as prepared. However, Lynch was not informed of the approval or of the letter of January 26, 1973 confirming such approval.

Appellee originally objected to and claimed to be defamed by both the article itself and the headline. However, his emphasis on appeal, in brief and oral argument, is really directed to the headline and the use of the word "rigged." The trial judge, and we agree, found nothing objectionable about the article itself. The author, Lynch, reported no more than the legitimate concern of LETA and the possibility of preferential treatment given the certain manufacturers, i.e., proprietary. There has been no appeal from that portion of the judgment dismissing appellee's suit against Lynch. Accordingly, the dispute now centers around the article and the headline and appellee's claims against and the defenses raised by appellant.

Appellant argues that the trial judge erred (1) in holding that in the context of the news article the use of the word " 'rigged' " in the headline gave rise to an action in defamation; (2) in refusing to hold that appellee was a "public official" or "public figure," thereby requiring proof by clear and convincing evidence that the publication was made with knowledge of its falsity or a high degree of awareness of its probable falsity; (3) in holding that the use of the word " 'rigged' " constituted fault under C.C. Art. 2315, and (4) in assessing excessive damages.

Appellant's first assignment of error is based on the well established rule that truth or substantial truth is a defense to an action in defamation. *Rosen v. Capital City Press*, 314 So.2d 511 (La. App. 1st Cir. 1975). Further, that R.S. 38:-2290-2296 prohibits closed specifications in public bidding. In this connection, appellant argues that the entire article, including the headline, must be viewed as a whole in determining whether any libel has been committed, *Mulina v. Item Co., Inc.*, 217 La. 842, 47 So.2d 560 (1950); that the article is based on the letter (January 25, 1973) which raised the question of improper, perhaps illegal, conduct; and, in this context, that the headline connotes no more or less than that



which is actually stated in the letter and would certainly be so understood by the everyday reader. Thus, appellant claims that an examination of the entire story, including the headline, clearly shows that the word "rigged" was used as a synonym of or paraphrase for "proprietary" or "closed" specifications, and that the headline was true or at the least, substantially true. This argument must be rejected.

We do not construe the word "rigged"[1] as being synonymous with the word "proprietary,"[2] particularly when it is used in the sense that illegality is inferred. The proprietary interest called to attention in the article may or may not be illegal, improper or otherwise questionable. However, the use of the word "rigged" leaves little doubt as to its import and brands the activity of appellee as fraudulent, illegal and improper. Whereas one not particularly versed in or blessed with a superior knowledge of word meanings might attach some improper motive to the proprietary inquiry contained in the letter, the word "rigged" dispels any doubt. The average, everyday individual does his talking, listening, reading, and writing without constant reference to an unabridged dictionary.

Appellant's second assignment of error pertains to the failure of the trial judge to hold that appellee is a public official or public figure so as to require a finding of malice on the part of the author or the publisher. The appellee is neither a public official nor a public figure under the holdings in New York Times Company v. Sullivan, 376 U. S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710 (1964) or *Gertz v. Welch*, 418 U. S. 323, 41 L.Ed.2d 789, 94 S.Ct. 2997 (1974).

The designation of "public official" applies, at a minimum, to those persons employed by a public or governmental body who have, or appear to have, substantial responsibility

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[1] Webster's Third New International Dictionary defines "rigged" as "a fraudulent or a cheating trick."

[2] Ibid., defines "proprietary" as "made and marketed by person or persons having the exclusive right to manufacture and sell."

for or control over the conduct of governmental affairs. *Rosenblatt v. Baer*, 383 U.S. 75, 15 L.Ed.2d 597, 86 S.Ct. 669 (1966). Appellee does not fall within the above category. He is a private consulting engineer who was hired by the architect. While he was responsible for the plans and specifications of the subject communications system, he was nonetheless totally accountable only to the architect. The eventual expenditure of public funds on the proposed building does not in itself make appellee a public official.

A person not a public official, who voluntarily injects himself or who is drawn into a particular public controversy becomes a public figure as regards that controversy and assumes a special prominence in the resolution of the controversy. In such a case the same rules apply to a public figure as apply to a public official. *Gertz v. Welch*, above. In such cases, malice or a total disregard as to the probable falsity of the objectionable material is required. Again, appellee does not fall within that class of persons deemed to be a public figure.

Appellant's third contention is that the trial judge erred in holding that the use of the word "rigged" constituted fault under the law of Louisiana so as to impose liability. We find the case of *Wilson v. Capital City Press*, 315 So.2d 393 (La. App. 3rd Cir. 1975), writ denied 320 So.2d 203 (1975), to be in point. There (315 So. 2d 393, 397) the court stated:

> "Under the mandate of *Gertz v. Robert Welch, Inc.*, supra, a publisher may be held liable for defamatory falsehood only if there is some fault on his part. The Supreme Court did not hold that the printing of an untruth would itself constitute fault. There must be some culpability on the part of the publisher.( Emphasis ours)

The same rationale was followed in *LeBouef v. Times Picayune Publishing Corporation*, 327 So.2d 430 (La. App. 4th Cir. 1976). In each of these cases an error in identification



was made by a law enforcement agency. There were no independent acts of culpability on the part of the defendants. In essence, the courts held that the reporters there concerned were not at fault when they failed to seek additional verification before publishing the names of persons given to them as having been arrested. In the case at bar, the facts are quite dissimilar. Here the use of the libelous term "rigged" was solely the act of an unidentified copy editor of the appellant-publisher. It was a poor and erroneous choice of words and, in our opinion, constitutes fault. C.C. Art. 2315.

Lastly, appellant argues that the award of $10,000.00 is grossly excessive " . . . in the absence of any evidence of more than temporary irritation and slight embarrassment." Appellee, while admitting that the article caused him some aggravation, testified that he had never been involved in any type of controversy, had always endeavored to practice his profession in keeping with proper ethics, and had always sought to abide by the law. Additionally, appellee claimed that he had received no state-associated work between the date of the article and the trial of this cause, a period in excess of three years. Under these circumstances, we are not disposed to hold that the trial judge abused the great discretion accorded him in such matters. C.C. Art. 1934(3).

Accordingly, for the above reasons, the judgment of the district court is affirmed at appellant's costs.

AFFIRMED.

# APPENDIX B

**JOEL I. FORREST**

*versus*

**BILL LYNCH AND TIMES PICAYUNE PUBLISHING COMPANY**

**No. 161,811**

**19th Judicial District Court, Parish of East Baton Rouge State of Louisiana**

## ORAL REASONS FOR JUDGMENT

The Court is of the opinion that plaintiff is not a public official and that he is not a public figure and, therefore, the standard of actual malice is not to be applied to the case. The question arises as to what standard should be applied as far as a private person is concerned, and it seems like the latest expression of the United States Supreme Court is that it's left up to each State to determine what standard it shall apply, the only limitation is that there cannot be liability without fault. Our Civil Code, in Article 2315, provides a basis of our concept of the word "fault"; as we all know, it's very, very broad and largely undefined. The Court, in this case, does find fault because of the negligent use of the word "rigged." "Rigged" is defined in the dictionary that I used, which is Webster's New Collegiate, the Eighth Edition, which says: Rigged or rigging could mean swindle, to manipulate or control, usually by deceptive or dishonest means, sort of like an election, or to fix in advance a desired result, such as on a quiz program.

Clearly the word used in the headline here did not appropriately fit the story which Mr. Lynch wrote and as such it was defamatory and in the opinion of the Court there was fault as envisioned by the Civil Code. Evidence further indi-



cates that the article which was written was merely an explanation and quotation from a letter. The negligent use of the word "rigged" was not that of Mr. Lynch's but was that of a member of the publisher's staff, therefore, the Court will dismiss the suit as against Mr. Lynch as an individual and render judgment against the Times Picayune Publishing Company in the amount of $10,000.00 (Ten Thousand Dollars). The matter of damages was prayed for, I believe, in three separate items, however, the Court finds it very difficult to separate the different items of damage, and since we only have the plaintiff's word, the plaintiff's testimony, in regard to the damage, so that testimony in regard to the apparent four editions of the paper that the story appeared in, with a circulation as big as that newspaper has, in an area as big as it services, I believe warrants a judgment in the amount of ten thousand dollars.

Baton Rouge, Louisiana, this 15th day of November, 1976.
Filed Nov. 15, 1976
Julia Neale, Dy. Clerk of Court
A True Copy
Julia Neale, Dy. Clerk

# APPENDIX C

**SUPREME COURT OF LOUISIANA**

**New Orleans 70112**
**October 28, 1977**

**JOEL I. FORREST**

*versus*

**BILL LYNCH AND TIMES PICAYUNE PUBLISHING CO.**

**No. 60,431**

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In re: Times Picayune Publishing Co. applying for certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of E. Baton Rouge.

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Denied. No error of law.

/s/ JAD
/s/ JWS
/s/ FWS
/s/ AT, Jr.
/s/ PFC

DENNIS, J., would grant the writ
MARCUS, J., recused

A TRUE COPY
Clerk's Office
Supreme Court of La.
New Orleans
October 28, 1977

/s/ Frans J. Labranche, Jr.
Deputy Clerk



# APPENDIX D

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1-26-73

**BID SPECS REPORTED 'RIGGED'**

By Bill Lynch
**States-Item Bureau**

BATON ROUGE—Specifications for an expensive television-sound system for the new school for the deaf scheduled for bidding Monday appear to be proprietary, officials of the Louisiana Educational Television Authority today advised the State Bond Commission.

Gov. Edwards, after learning of the situation, ordered removal of the television-sound system from the project until the matter is cleared up.

The school is expected to cost more than $8 million and the sound system, which may run $300,000, according to private estimates, is included as part of the electrical specifications.

Max Fetty, executive director, and Robert D. Blazier, Educational Television engineer, notified the bond commission of their feelings yesterday, after having been furnished copies of the specifications well after the plans went on the market.

To change the specifications at this late hour would require issuance of an addendum today.

"The nature of these specifications seems somewhat proprietary to certain manufacturers," the LETA officials said.

There are legal prohibitions against utilizing proprietary specifications.

A new Louisiana law requires approval by the LETA of new television installations, but apparently was not followed until the last moment.

It was only Tuesday that Blazier was given the specifications to review, leaving little time to probe more deeply into the proposal.

The LETA officials asked for functional drawings and more detailed manufacturers' specifications to determine the scope of the proposal.

The school is being designed by the architectural firm of August Perez and Associates of New Orleans and the electrical engineering is by Joel Forrest of Baton Rouge.

In a letter to Robert Baskin, director of the bond commission, Fetty and Blazier said:

"After reviewing the specifications for the communication system for the Louisiana State School for the Deaf in Baton Rouge, we must commend the writer for the use of very innovative television technology. The functions described in these specifications require sophisticated interconnection and planning.

"In order to properly evaluate the true quality of these specifications, it will be necessary that one-line functional drawings be provided.

"It is incumbent upon us to determine that the system as specified will function in accordance with the desires of the school for the deaf.

"The nature of these specifications seems somewhat proprietary to certain manufacturers. Nonetheless, it is our desire to have specifications that all responsible bidders can bid with immunity.

"In evaluating these specifications, it would assist us greatly to have manufacturers' specifications sheets for each of the major electronic devices."



If the bids are allowed to go through under the present proposal, then the requirement for review by the LETA would be meaningless.

As part of the electrical portion of the specifications, bidding on the television-sound system could have a signficant effect on the general contract bids.

The State Bond Commission has taken over the functions of a number of state bidding agencies that generally operated under the same umbrella.

The issue was brought up at a press conference held by Edwards and Superintendent of Education Louis Michot on another matter. Michot said he had learned of the LETA's position only this morning and was urging that action on the TV-sound system be delayed.

Edwards turned to his executive counsel, Sheldon Beychok, and told him to advise Baskin to issue an addendum today to delete the TV-sound system from the bidding or to wait until Monday, if it could be done, so he could discuss the proposal.

## PROOF OF SERVICE

I, F. W. Middleton, Jr., attorney for the petitioner herein, and a member of the Bar of the Supreme Court of the United States hereby certify that on the _____ day of February, 1978, I served three (3) copies of the foregoing petition for a writ of certiorari on respondent, Joel I. Forrest, by mailing through the United States mail to his counsel of record, Mr. Robert L. Kleinpeter, P. O. Box 66443, Baton Rouge, Louisiana 70806, first-class, postage prepaid.

All parties required to be served with copies of this petition for a writ of certiorari have been served.

February _____, 1978.

_____

F. W. Middleton, Jr.

Supreme Court, U. S.
FILED
MAR 27 1978
MICHAEL RODAK, JR., CLERK

# IN THE
# SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1199

**TIMES-PICAYUNE PUBLISHING COMPANY,**
**Petitioner,**

**versus**

**JOEL I. FORREST,**
**Respondent.**

## OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. _____

**TIMES-PICAYUNE PUBLISHING COMPANY,**
**Petitioner,**

**versus**

**JOEL I. FORREST,**
**Respondent.**

## OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

Respondent, Joel I. Forrest, respectfully submits that a writ of certiorari should not issue to review the judgment and opinion of the Court of Appeal, First Circuit, State of Louisiana, entered herein on June 13, 1977 and reported at 347 So.2d 1255 for the reasons hereinafter set forth.

The opinion of the Court of Appeal, First Circuit, State of Louisiana, entitled "Joel I. Forrest v. Times-Picayune Publishing Company" 347 So.2d 1255 (1977) clearly sets forth the facts involved and disposes of the legal issues and appears in Appendix A hereto, infra. p. 8. Suit was initially instituted against the investigative reporter, Bill Lynch, and the pub-

lisher, Times-Picayune Publishing Corporation. However, suit was properly dismissed as to the investigative reporter and no appeal was perfected from this judgment. Consequently, the only party involved on appeal was Times-Picayune Publishing Corporation.

## RESPONSE TO QUESTIONS PRESENTED

1. Is an engineer who prepares specifications for a multi-million dollar state building a "public figure" or a "public official" for purposes of a newspaper article reporting a state authority's preliminary determination that the engineer has drawn proprietary specifications that are potentially unlawful?

The news article at issue herein was based on a letter of January 25, 1973, quoted in full in the decision of the Court of Appeal, First Circuit, State of Louisiana, and the letter clearly reflects that it contains many qualifications. The letter refers to "somewhat proprietory (sic)" and makes no indication of anything being "closed" and as set forth in the decision complained of by applicant, the use of "proprietary" or "closed" specifications are not necessarily illegal, whereas, the use of the term "rigged" in the headline to the news article leaves no doubt in the mind of the average reader as to the methods being conveyed by the publisher. Accordingly, applicant's argument about "proprietary" and "closed" specifications being synonymous is of no significance to a determination of the issues inasmuch as both are completely legal under certain facts and circumstances. Additionally, the letter which is the basis of the news article involved qualified the term "proprietary" by utilizing "somewhat proprietary." Further, the plans and specifications on the particular project involved clearly specified that "equals or better" would be accepted and that reference to a brand name was solely for the purpose of designating quality.



By utilizing such an argument, counsel for applicant is attempting to create a "public controversy" in which to thrust respondent. The facts of this case clearly reflect that Joel I. Forrest is a private consulting engineer; has never held public office nor has he been a candidate for public office; and, has not become involved in anything which would make him newsworthy. In this instance, he contracted with an architect, August Perez, and had no direct relationship with the governmental agency.

Prior to trial on the merits, counsel for Times-Picayune Publishing Company moved for summary judgment which was denied by the Trial Court, However, it should be noted that the motion for summary judgment was not timely filed inasmuch as it was filed several days prior to the trial on the merits was scheduled and did not allow the necessary statutory ten day delay for a response prior to a hearing on the motion. The motion for summary judgment raised the issue as to whether respondent was a "public official" or "public figure" and in this application, petitioner has apparently abandoned any contention that respondent was a "public official" although weakly stating that there is precedence for treating respondent as a public official under the decision of *Rosenblatt v. Baer*, 388 U.S. 75 (1966).

Primarily, petitioner now complains that respondent is a "public figure" as defined in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). We submit that a reading of *Gertz* does not substantiate such a conclusion.

As we appreciate the opinion in *Gertz*, the Court seems to recognize three categories of public figures. The first classification includes persons who, by "occupy(ing) positions of such persuasive power and influence,"[1] or by their "pervasive

1. Gertz, 418 U.S. 323, 345.

involvement in the affairs of society,"[2] or by the "notoriety of their achievements"[3] have achieved "general fame or notoriety in the community."[4]

It would appear from the Court's observation to the effect "We would not lightly assume that a citizen's participation in community and professional affairs rendered him a public figure for all purposes"[5] makes it unlikely that many persons would fall into the first category. Commenting further, the Court observed, "More commonly, those classed as public figures have thrust themselves to the forefront of particular **public controversies** in order to influence the resolution of the issues involved."[6] (Emphasis supplied.) Continuing, the Court stated that where "an individual voluntarily injects himself or is drawn into a particular public controversy (he) thereby becomes a public figure for a limited range of issues."[7] With reference to this category of public figures, the Court stated, "(i)t is preferable to reduce the public figure question to a more meaningful context by looking to the nature and extent of an individual's participation in a particular controversy giving rise to the defamation."[8]

As a guideline on how to evaluate the "nature and extent" of an individual's involvement in a public controversy, the Court suggested several factors to consider: Whether the individual sought out and discussed the issue with the press; whether he "thrust himself into the vortex of (the) public issue"; and whether he otherwise "engage(d) the public's attention in an attempt to influence its outcome."[9]

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2. Id. at 352.
3. Id. at 342.
4. Id. at 351-52.
5. Id. at 352.
6. Id. at 345.
7. Id. at 351.
8. Id. at 352.
9. Id.



*Gertz* further suggests that perhaps an individual might become an involuntary public figure, or at least that is our interpretation, particularly the language: "Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare."[10]

Apparently, in this instance, it is the contention of petitioner that respondent falls into the second category of the defamed individual who has voluntarily participated in a particular public controversy. However, counsel for petitioner speaks of matters of "public interest" but has not at any time contended nor do they set forth facts to substantiate that a "public controversy" existed or that respondent had voluntarily participated in the same in an effort to resolve the controversy.

We submit that counsel for petitioner is confusing "involvement in a matter of public concern" with voluntary "participation in a public controversy" and while the concepts may be somewhat related, *Gertz* nevertheless requires voluntary participation "in a public controversy" as compared to involvement in a matter of "public concern", overruling *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971).

It thus appears from *Gertz* that once a public controversy is established there must be an additional examination to determine the nature and extent of plaintiff's participation in the controversy before he can be classified a public figure.

In this instance, petitioners have not established that a public controversy existed and the only connection with the matter of "public concern or interest" was indirect through the architect and the respondent had no contractual relationship with the government or any government agency.

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10. Id. at 345.

Counsel for petitioner concludes that *Time, Inc. v. Firestone*, 424 U.S. 448 (1976) bears no resemblance to the facts of the instant case and admittedly this observation is correct. The Court, in *Firestone*, concluded that Mary Alice Firestone was not a "public figure" since she did not occupy "(a) role" of "especial prominence in the affairs of society,' and that she had not been "thrust to the forefront of particular public controversies in order to influence the resolution of the issues involved." To this extent, counsel for respondent agrees with counsel for petitioner, however, *Time, Inc. v. Firestone*, supra, contains language pertinent to the issues at hand and particularly that observation to the effect that there was never any findings made by the divorce court that Mary Alice Firestone was guilty of adultery although *Time, Inc.* contended that it faithfully reproduced the **precise** meaning of the divorce judgment. In this instance, the Trial Court and intermediate Appellate Court, has concluded that, under Louisiana law, the terms "proprietary" and "closed" specifications are not synonymous nor was the word "rigged" synonymous with the word "proprietary", consequently, the headline "rigged" did not convey the precise meaning of the news article.

Petitioner contends that the Court of Appeal, First Circuit, State of Louisiana, committed error and cited no authority for its conclusion that respondent was not a public figure and cited the following District Court decisions: *Hutchinson v. Proxmire*, 431 F.Supp. 1131 (W.D.Wisc., 1977); *Adey v. United Action for Animals*, 361 F.Supp. 451 (S.D.N.Y. 1973) aff'd, 493 F.2d 1397 (2d Cir.); cert. denied, 419 U.S. 842 (1974); *Martin Marietta Corp. v. Evening Star Newspaper*, 417 F.Supp. 947 (D.D.C. 1976); and *Green Belt Coop. Assn. v. Bresler*, 398 U.S. 6 (1970). *Adey* and *Green Belt Coop. Assn.* are pre-*Gertz* decisions and the facts of all four cited cases clearly distinguishes them from the facts of the instant case.



Accordingly, we respectfully submit that the Trial Court and the Court of Appeal, First Circuit, State of Louisiana, correctly concluded that respondent was not a public official nor a public figure.

2. Absent any showing of actual malice, may a newspaper that reports a state authority's preliminary determination that specifications for a state building are proprietary and potentially unlawful be required to respond in damages for libelling the engineer who prepared the specifications?

Petitioner did not argue this question and presents nothing for respondent to oppose. Briefly, respondent admits that a newspaper report of a state authority's preliminary determination, if fairly and accurately reported, would not and does not subject the newspaper to the possibility of responding in damages if not otherwise objectionable. The opinion of the Court of Appeal, First Circuit, State of Louisiana, clearly reflects that the caption or headline to the news article in question utilized the term "rigged" on the first page and on the continuation of the story on page six of the same newspaper, they used the term "questioned." The only reason advanced for using the term "rigged" on the front page as compared to "questioned" on page six was the lack of space. This may be an excuse on the part of the publisher for using the offensive language "rigged" but certainly is not justification in law. Additionally, we submit that knowingly utilizing the language in the headline, which was totally unsupported by the published article, would and should constitute actual malice according to the guidelines set forth in *St. Amant v. Thompson*, 390 U.S. 727 (1968). Particularly, we direct the Court's attention to the language in *St. Amant*:

> "The defendant in a defamation action brought by a public official cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true.

> The finder of fact must determine whether the publication was indeed made in good faith. Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unvertfied anonymous phone call. Nor will they be likely to prevail when the publisher's allegations are so inherently improbable that only a reckless man would ever put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his report." St. Amant v. Thompson as 732.

Petitioner should not be permitted to contend that the word "rigged" was utilized in good faith when the story accompanying the headline does not substantiate anything illegal and when the continuation of the story allows more space, the headline reads "questioned", a completely unobjectionable word.

## CONCLUSION

We respectfully submit that a writ of certiorari should not issue to review the judgment and opinion of the Court of Appeal, First Circuit, State of Louisiana.

Respectfully submitted,

Robert L. Kleinpeter
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P. O. Box 66443
Baton Rouge, La. 70896
Telephone: (504) 926-5093



## PROOF OF SERVICE

I, ROBERT L. KLEINPETER, Attorney for Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of March, 1978, I served three copies of the foregoing opposition to the petition for a writ of certiorari on petitioner) Times-Picayune Publishing Corporation, by mailing the same through the United States mail to counsel of record, Mr. Frank W. Middleton, Jr., P. O. Box 2471, Baton Rouge, Louisiana, first class, postage prepaid.

All parties required to be served with copies of this opposition have been served.

March 23, 1978.

Robert L. Kleinpeter

# APPENDIX A

**JOEL I. FORREST**

**Plaintiff-Appellee**

**versus**

**BILL LYNCH AND TIMES-PICAYUNE PUBLISHING COMPANY**

**Defendant-Appellant**

**Court of Appeal, First Circuit, State of Louisiana**
**Number 11,361**

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF EAST BATON ROUGE, HONORABLE DANIEL W. LEBLANC, JUDGE, PRESIDING

BEFORE: SARTAIN, COVINGTON AND LOTTINGER, JJ.

SARTAIN, J.

**June 13, 1977**

This is a defamation suit arising out of an article that appeared on January 26, 1973 in the States Item, a newspaper of general circulation in the New Orleans area.

Plaintiff, Joel I. Forrest (appellee) is a consulting electrical engineer. He was engaged by the architect to prepare plans and specifications, including bid specifications, for the television-sound system for the Louisiana State School for the Deaf, Baton Rouge, Louisiana.

The article itself was written by Bill Lynch. The headline attending the article was prepared by an unidentified staff member of the owner-publisher, Times Picayune Publishing Company (appellant).

Appellee named as defendants the author, Lynch, and the appellant publisher. The trial judge rendered judgment in favor of appellee and against the publisher only, absolving the author of any liability. We affirm.

The facts are not in dispute. The taking of bids and related matters are under the supervision of the State Bond and Building Commission, Bob Baskin, Director. However, the law requires the prior approval of the Louisiana Educational Television Authority (LETA) on that portion of the project relating to the communication system. Robert D. Blazier and Max Fetty are the Educational Television Engineer and Executive Director, respectively, of LETA.

On the Tuesday preceding the Monday on which the bids were to be taken, the plans and specifications pertaining to the communication system were submitted to Blazier and Fetty. On the intervening Thursday, January 25, 1973, Blazier and Fetty addressed a letter to Baskin, which in pertinent part stated:

> "After reviewing the specifications for the communication system for the Louisiana State School for the Deaf in Baton Rouge, I must commend the writer for the use of very innovative television technology. The functions described in these specifications require sophisticated interconnection and planning.
>
> "In order to properly evaluate the true quality of these specifications, it will be necessary that one-line functional drawings be provided. It is incumbent upon us to determine that the system as specified will function in accordance with the desires of the School for the Deaf. **The nature of these specifications seem somewhat proprietory (sic) to certain manufacturers.** Nonetheless, it is our desire to have specifications that all responsible bidders can bid with impunity. In evaluating these specifications, it would assist us greatly to have manufacturers specifications sheets for each of the major electronic devices. * * *" (Emphasis ours)



Bill Lynch, capital correspondent for appellant, was given a copy of the letter. The subject article was then written and transmitted to appellant for publication. It appeared in appellant's paper on the following day, Friday, January 26, 1973.

The lead paragraph set the general tenor of the article:

> "BATON ROUGE—Specifications for an expensive television-sound system for the new school for the deaf scheduled for bidding Monday appear to be proprietary, officials of the Louisiana Educational Television Authority today advised the State Bond Commission. * * *"

The above portions of the letter of January 26, 1973, are also quoted in their entirety. With respect to appellee the article stated:

> "* * * The school is being designed by the architectural firm of August Perez and Associates of New Orleans and the electrical engineering is by Joel Forrest of Baton Rouge. * * *"

However, the headline of the article stated:

"BID SPECS REPORTED 'RIGGED'"

The article was placed on page one of the paper and was continued to page six. The headline for the continued portion of the article read:

"Bid Specs Questioned"

The record reflects that on the evening of January 25, 1975, Forrest met with Blazier and it was determined that the bid specifications were in order and were therefore ap-

provd by LETA as prepared. However, Lynch was not informed of the approval or of the letter of January 26, 1973 confirming such approval.

Appellee originally objected to and claimed to be defamed by both the article itself and the headline. However, his emphasis on appeal, in brief and oral argument, is really directed to the headline and the use of the word "rigged." The trial judge, and we agree, found nothing objectionable about the article itself. The author, Lynch, reported no more than the legitimate concern of LETA and the possibility of preferential treatment given the certain manufacturers, i.e., proprietary. There has been no appeal from that portion of the judgment dismissing appellee's suit against Lynch. Accordingly, the dispute now centers around the article and the headline and appellee's claims against and the defenses raised by appellant.

Appellant argues that the trial judge erred (1) in holding that in the context of the news article the use of the word " 'rigged' " in the headline gave rise to an action in defamation; (2) in refusing to hold that appellee was a "public official" or "public figure," thereby requiring proof by clear and convincing evidence that the publication was made with knowledge of its falsity or a high degree of awareness of its probable falsity; (3) in holding that the use of the word " 'rigged' " constituted fault under C.C. Art. 2315, and (4) in assessing excessive damages.

Appellant's first assignment of error is based on the well established rule that truth or substantial truth is a defense to an action in defamation. *Rosen v. Capital City Press*, 314 So.2d 511 (La. App. 1st Cir. 1975). Further, that R.S. 38:-2290-2296 prohobits closed specifications in public bidding. In this connection, appellant argues that the entire article, including the headline, must be viewed as a whole in determining whether any libel has been committed, *Mulina v. Item Co., Inc.*, 217 La. 842, 47 So.2d 560 (1950); that the article is based on the letter (January 25, 1973) which raised the question of improper, perhaps illegal, conduct; and, in this context, that the headline connotes no more or less than that which is actually stated in the letter and would certainly be so understood by the everyday reader. Thus, appellant claims that an examination of the entire story, including the headline, clearly shows that the word "rigged" was used as a synonym of or paraphrase for "proprietary" or "closed" specifications, and that the headline was true or at the least, substantially true. This argument must be rejected.



We do not construe the word "rigged"[1] as being synonymous with the word "proprietary,"[2] particularly when it is used in the sense that illegality is inferred. The proprietary interest called to attention in the article may or may not be illegal, improper or otherwise questionable. However, the use of the word "rigged" leaves little doubt as to its import and brands the activity of appellee as fraudulent, illegal and improper. Whereas one not particularly versed in or blessed with a superior knowledge of word meanings might attach some improper motive to the proprietary inquiry contained in the letter, the word "rigged" dispels any doubt. The average, everyday individual does his talking, listening, reading, and writing without constant reference to an unabridged dictionary.

Appellant's second assignment of error pertains to the failure of the trial judge to hold that appellee is a public official or public figure so as to require a finding of malice on the part of the author or the publisher. The appellee is neither

1. Webster's Third New International Dictionary defines "rigged" as "a fraudulent or a cheating trick."
2. Ibid., defines "proprietary" as "made and marketed by person or persons having the exclusive right to manufacture and sell."

a public official nor a public figure under the holdings in New York Times Company v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686, 84 S.Ct. 710 (1964) or *Gertz v. Welch*, 418 U.S. 323, 41 L.Ed.2d 789, 94 S.Ct. 2997 (1974).

The designation of "public official" applies, at a minimum, to those persons employed by a public or governmental body who have, or appear to have, substantial responsibility for or control over the conduct of governmental affairs. *Rosenblatt v. Baer*, 383 U.S. 75, 15 L.Ed.2d 597, 86 S.Ct. 669 (1966). Appellee does not fall within the above category. He is a private consulting engineer who was hired by the architect. While he was responsible for the plans and specifications of the subject communications system, he was nonetheless totally accountable only to the architect. The eventual expenditure of public funds on the proposed building does not in itself make appellee a public official.

A person not a public official, who voluntarily injects himself or who is drawn into a particular public controversy becomes a public figure as regards that controversy and assumes a special prominence in the resolution of the controversy. In such a case the same rules apply to a public figure as apply to a public official. *Gertz v. Welch*, above. In such cases, malice or a total disregard as to the probable falsity of the objectionable material is required. Again, appellee does not fall within that class of persons deemed to be a public figure.

Appellant's third contention is that the trial judge erred in holding that the use of the word "rigged" constituted fault under the law of Louisiana so as to impose liability. We find the case of *Wilson v. Capital City Press*, 315 So.2d 393 (La. App. 3rd Cir. 1975), writ denied 320 So.2d 203 (1975), to be in point. There (315 So. 2d 393, 397) the court stated:



> "Under the mandate of *Gertz v. Robert Welch, Inc.*, supra, a publisher may be held liable for defamatory falsehood only if there is some fault on his part. The Supreme Court did not hold that the printing of an untruth would itself constitute fault. There must be some culpability on the part of the publisher. (Emphasis ours)

The same rationale was followed in *LeBouef v. Times Picayune Publishing Corporation*, 327 So.2d 430 (La. App. 4th Cir. 1976). In each of these cases an error in identification was made by a law enforcement agency. There was no independent acts of culpability on the part of the defendants. In essence, the courts held that the reporters there concerned were not at fault when they failed to seek additional vertfication before publishing the names of persons given to them as having been arrested. In the case at bar, the facts are quite dissimilar. Here the use of the libelous term "rigged" was solely the act of an unidentified copy editor of the appellant-publisher. It was a poor and erroneous choice of words and, in our opinion, constitutes fault. C.C. Art. 2315.

Lastly, appellant argues that the award of $10,000.00 is grossly excessive ". . . in the absence of any evidence of more than temporary irritation and slight embarrassment." Appellee, while admitting that the article caused him some aggravation, testified that he had never been involved in any type of controversy, had always endeavored to practice his profession in keeping with proper ethics, and had always sought to abide by the law. Additionally, appellee claimed that he had received no state-associated work between the date of the article and the trial of this cause, a period in excess of three years. Under these circumstances, we are not disposed to hold that the trial judge abused the great discretion accorded him in such matters. C.C. Art. 1934(3).

Accordingly, for the above reasons, the judgment of the district court is affirmed at appellant's costs.

AFFIRMED.